

### **REMARKS**

This responds to the Office Action mailed on September 14, 2004.

No claims are amended, canceled, or are added; as a result, claims 1–15 remain pending in this application.

#### **Allowable Subject Matter**

Claims 10-12 were allowed.

Claims 2, 8, 9, and 15 were objected to as being dependent upon a rejected base claim, but were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Since the rejections have been shown to be defective, for the reasons stated below, Applicants have not rewritten the claims but reserves the right to do so in the future if necessary.

#### **§102 Rejection of the Claims**

Claims 1, 3-5, 7, 13, and 14 were rejected under 35 USC § 102(e) as being anticipated by US Pub. No. 2003/0195983 A1 “in view of Krause<sup>1</sup>.” Applicants respectfully traverse the rejection for the reasons stated below.

The rejection is based upon the published Krause application 2003/0195983, an application filed May 21, 2003 which was published October 16, 2003. Applicants’ application was filed January 17, 2001. Krause is not prior art.

Applicant notes that the rejection is asserted by the Office Action to be under 35 U.S.C. 102 (e). Under the 35 U.S.C. 102 (e) one of two clauses needs to be satisfied to support a proper rejection.

Under 35 U.S.C. 102 (e) (2) there must be “a patent granted on an application for patent by another filed before the invention by the applicant” Krause is not a patent so that clause cannot apply.

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<sup>1</sup> Office Action, page 3 Applicants have assumed that the anticipation rejection is based solely upon the Krause publication in spite of the “in view of” language.

Under 35 USC § 102 (e) (1) there must be “an application for patent by another published “before the invention by the applicant.” Since the Krause application was published long after the filing date of the present application, clause 35 USC § 102 (e) (1) cannot apply.

The examiner has not shown that any of the material from Krause relied upon in support of the rejections herein is disclosed in the prior applications to which Krause claims priority, since the cited application is a continuation-in-part of prior, apparently still secret, patent applications and therefore contains additional subject matter beyond what was in the prior applications.

Since the Krause publication has not been shown to be a proper 35 USC § 102 (e) reference under either clause of 35 USC § 102 (e), the rejection based upon Krause is defective and must be withdrawn.

#### §103 Rejection of the Claims

Claim 6 was rejected under 35 USC § 103(a) as being unpatentable over Krause (US Pub. No. 2003/0195983 A1) in view of Haley (U.S. 5,884,036).

Since the Krause publication was shown above to be a defective 35 USC § 102 (e) reference, its combination with Haley in a 35 USC § 103 rejection is similarly defective and the rejection must be withdrawn.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney ((612) 373-6970) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date

January 13, 2005

By

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 14th day of January, 2005.

Name

Amy Moriarty

Signature

[Signature]